

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provision of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

**EXCEL TELECOMMUNICATIONS, INC.'S
REPLY TO OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Excel Telecommunications, Inc. ("Excel"), on behalf of its operating affiliates, and pursuant to the Federal Communications Commission's ("Commission") Public Notice released September 11, 2000, respectfully submits this Reply to the Opposition to Petitions for Reconsideration ("Opposition") filed in the above-referenced proceeding by Verizon.

Excel disagrees with the thrust of Verizon's Opposition that mistakes and/or improper execution of carrier change requests on the part of executing carriers that result in unauthorized carrier changes should not be treated under the Commission's rules as slams by the executing carrier (LEC). Excel agrees with the Petitions for Reconsideration filed by Sprint and WorldCom that the Commission should clarify that the executing LEC is responsible for failing to execute a switch properly, particularly with respect to "LEC installs" or "LEC connects" (carrier change requests that result from communications by customers directly with a local exchange carrier).

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As Sprint and WorldCom point out, the Commission's rules as currently drafted do not provide carriers accused of slamming with any method of rebutting a slamming complaint other than to provide verification of an authorized carrier change as specified in section 64.1120. Section 64.1100 of the Commission's rules defines an "unauthorized change" as the placement of a carrier change order without proof of proper verification. The Commission's rules also require "clear and convincing" evidence that the carrier has obtained such verification upon a slamming allegation, and state that "[f]ailure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation." 64 C.F.R. § 11.50(d).

In the case of LEC installs, the interexchange carrier ("IXC") cannot provide *any* evidence of verification in response to a slamming allegation, since such LEC installs do not result in the creation of an LOA or a third party verification record by the IXC because such orders are placed entirely without the IXC's involvement.

Excel joins Sprint and WorldCom in their requests that the Commission revise its rules to clarify that IXCs are not liable for unauthorized carrier changes that result from LEC installs. Excel agrees with AT&T's comments that, pursuant to Section 258 of the Communications Act, an IXC cannot be liable for any violation of Section 258 that results from a LEC install, since in such cases the IXC has not "submitted" any change in a subscriber's selection of telephone service provider. Excel further agrees with AT&T that pursuant to the enabling act and the existing Commission rules, IXCs should not legally be held liable for LEC installs that result in slamming complaints. However, given that the only method by which a carrier may rebut a slamming allegation under the rules as currently drafted is to provide "clear and convincing" proof of proper

verification, Excel agrees with Sprint and WorldCom that, at a minimum, section 64.1150(d) must be revised to take into account slams that result from LEC installs.

Excel also supports Sprint's argument in its Petition for Reconsideration that an executing carrier responsible for a slam should be required to provide restitution to the subscriber and authorized carrier under the slamming liability rules, and pay the innocent IXC for all charges and fees incurred by the subscriber but not paid to the IXC. Excel submits that the executing LEC should be held responsible in this manner in order to make the customer whole and to provide incentive for the executing LEC to avoid making errors in the process of executing a switch.

Throughout this proceeding, the Commission has rightly focused on consumer protection in establishing rules that will eliminate incidents of slamming. The Commission has established in its Orders in this proceeding that a carrier is liable for unauthorized carrier change submissions, regardless of intent. Accordingly, a carrier is liable under the slamming rules if the carrier's data entry mistakes result in an unauthorized carrier change. The same should be true for the executing carrier.

Moreover, in keeping with the Commission's focus on establishing rules that will protect consumers, LECs must be held responsible for their own errors in order to provide relief to consumers who are slammed as a result of a LEC install. Customers whose carriers are switched without their consent or knowledge by virtue of a LEC install should be entitled to relief from the responsible LEC under the slamming liability rules just as a slammed customer under any other scenario would be entitled to relief. Verizon states on page 4 of its opposition that a LEC "mistake" that results in a slam should be treated only as a mistake, not as a slam. Under Verizon's proposal, the customer's

remedy apparently would be limited to a switch back to the proper carrier without charge or would require the filing of a formal complaint to obtain further relief.

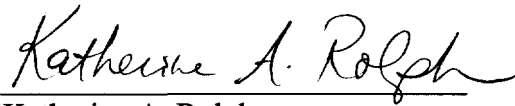
Verizon does not address the fact that customers slammed by the executing LEC experience the same confusion and potential difficulty in remedying the slam that any other slammed customer would experience. Moreover, in the case of a LEC install, such customer confusion resulting from the slam most likely will reflect negatively on the IXC to whom the customer has been switched, since the customer likely will assume that he or she has been slammed by the IXC. Thus, not only would the customer find him or herself without a remedy under the slamming liability rules under Verizon's proposal, but the reputation of the innocent IXC may be compromised.

For these reasons, and in order to give the executing LECs the proper incentive to avoid making such errors and improper execution of carrier change requests, Excel respectfully submits that the Commission should grant the petitions of Sprint and WorldCom by clarifying that IXCs are not responsible or liable for slams resulting from LEC installs, and that the Commission should grant Sprint's request that an executing LEC be subject to the slamming liability provisions when a LEC install results in a slam.

Respectfully submitted,

Excel Telecommunications, Inc.

James M. Smith
Marcy A. Greene
Excel Telecommunications, Inc.
1133 Connecticut Avenue, NW
Suite 750
Washington, DC 20036
(202) 331-4295

By 
Katherine A. Rolph
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007
(202) 424-7788

CERTIFICATE OF SERVICE

I, Janet M. Perry, do hereby certify that on this 12th day of October, 2000 a copy of the foregoing "Excel Telecommunications, Inc.'s Reply to Opposition to Petitions for Reconsideration" was served by U.S. first-class mail, postage prepaid, on the parties listed below.

October 12, 2000


Janet M. Perry

Magalie Roman Salas*
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Maryl L. Brown
Karen Reidy
WorldCom
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Dorothy Atwood, Chief*
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mark C. Rosenblum
Peter H. Jacoby
AT&T Corp.
Room 1134L2
295 North Maple Avenues
Basking Ridge, NJ 07920

Michelle K. Walters, Esq.*
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

John M. Goodman, Esq.
Attorney for Verizon
1300 I Street, N.W.
Washington, D.C. 20005

Sheryl Todd, Esq.*
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
401 9th Street NW, Suite 400
Washington, DC 20004

International Transcription Service*
445 12th Street, SW
Washington, DC 20554

* Indicates hand delivery.